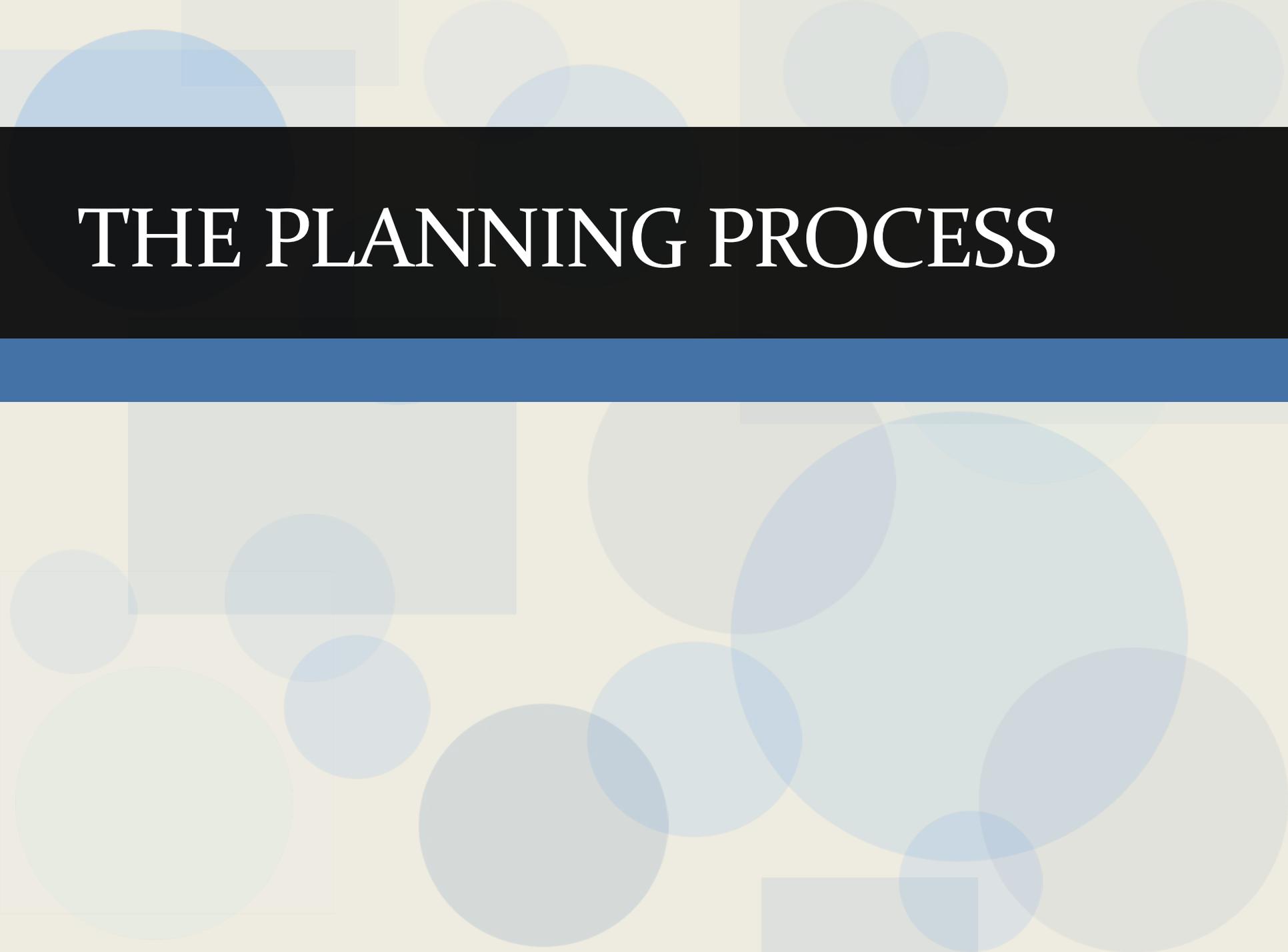




UNDERSTANDING HOW ZONING, COMPREHENSIVE PLANNING AND ORDINANCES INFLUENCE YOUR BUSINESS

Virginia Working Waterfront Workshop -February 26, 2014

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Gloucester County**



THE PLANNING PROCESS

Begins with the Comprehensive Plan



- **General** guide for long range policy and decision-making on matters relating to the physical development of the county
- **Comprehensive** overview of the total land use needs in the County
- Based on studies, surveys, **data and analysis** to project and plan for **the future** development of the County
- Living document – **changes with the community over time**



Why do we need one?



- Required by Code of Virginia
- Provides a vehicle for local governments and citizens to express their goals and vision for the future of the community
- Improves the likelihood that governmental decisions affecting a community's development will be based on the desires and needs of its citizens
- Need to plan before you can implement or get funding



What a Comprehensive Plan is NOT



ZONING



What a Comprehensive Plan is NOT

- It does not regulate land use – it is a **guide** to a locality in making land use and zoning decisions
- It cannot solve problems immediately
 - Long term
 - Need measurable goals and objectives
- It cannot solve all problems for all people – based on community consensus and the approval by the governing body.



Planning vs. Zoning

"Zoning is merely a tool. It can be used constructively as a positive force for community good or it can be misused. Zoning is what you make of it. It works best when it is based on a vision and closely tied to the comprehensive plan."

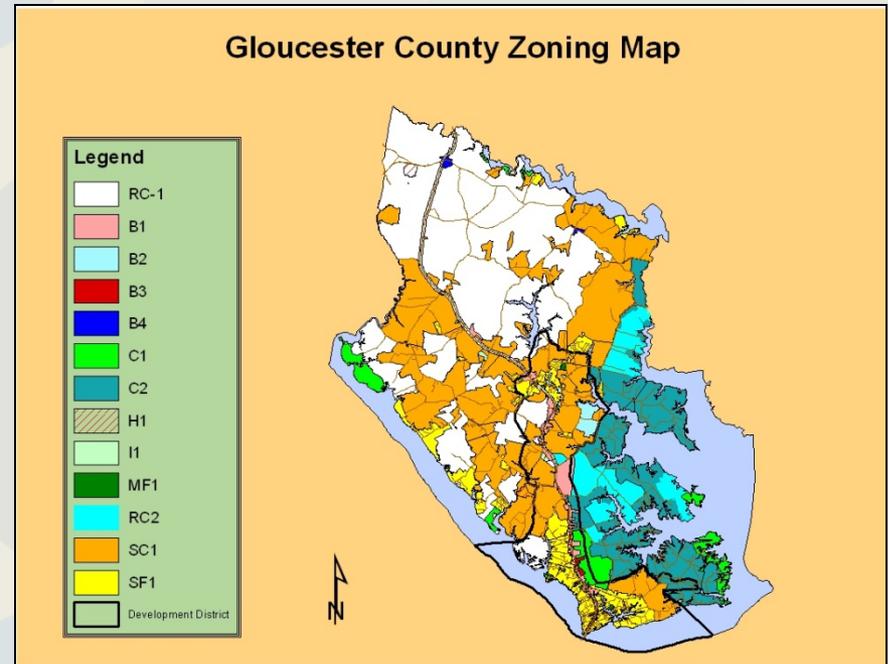
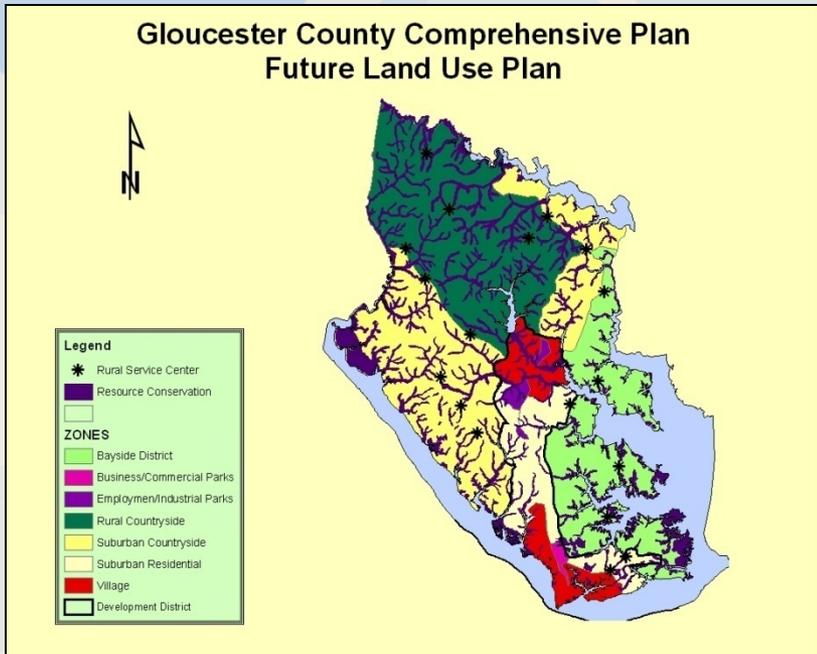
-- Edward T. McMahan, "[What's So Bad About Zoning?](#)" (from *Planning Commissioners Journal* Issue #44)



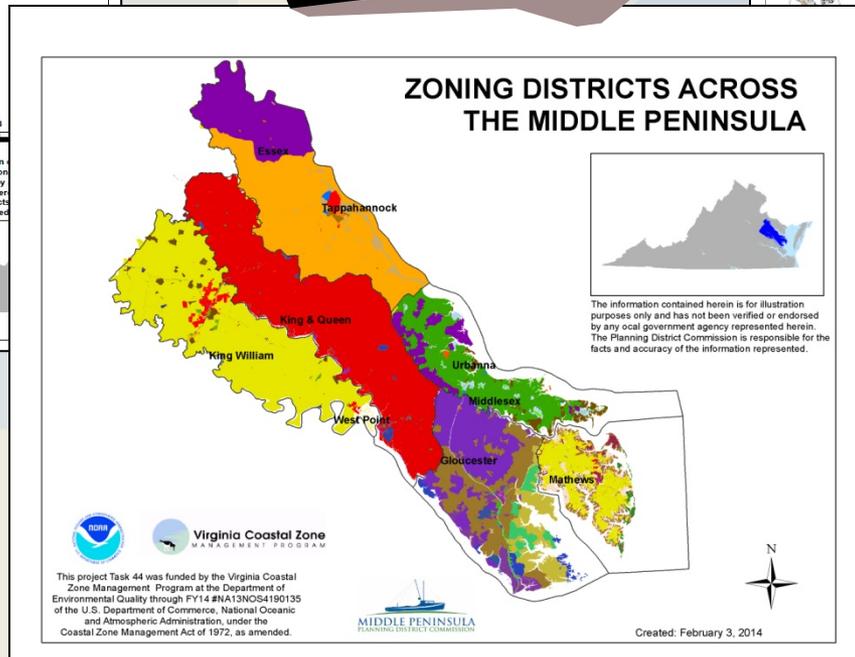
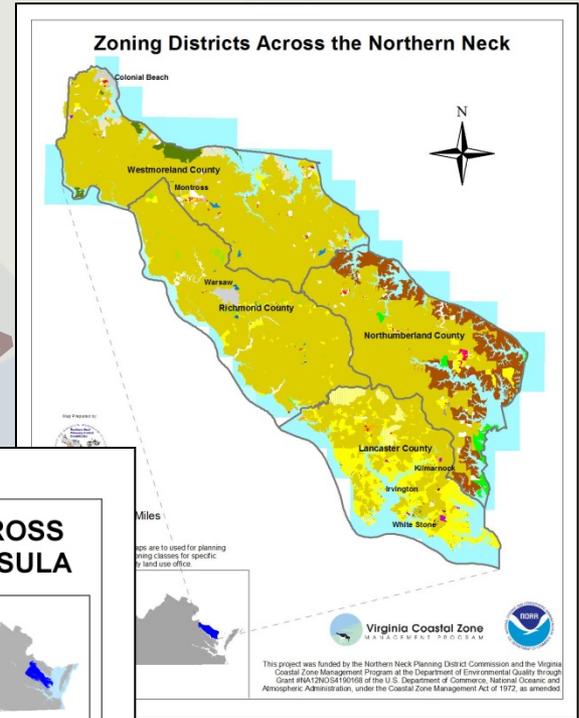
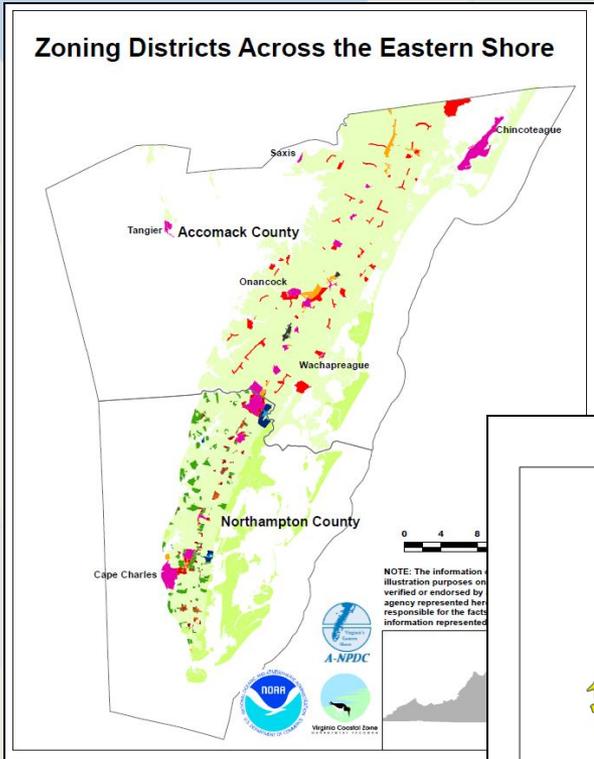
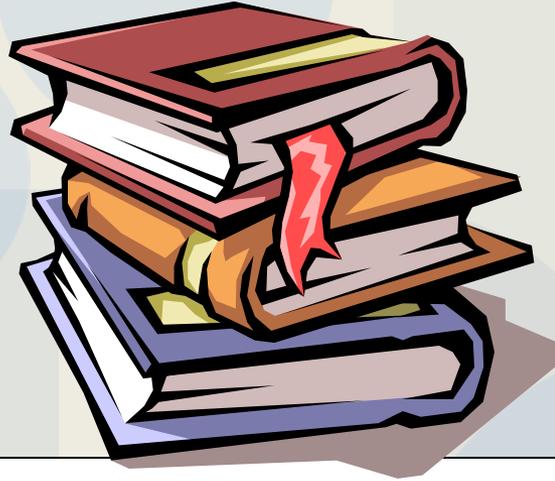
Other Plans

- Capital Improvements Plan
- Open Space Management Plan
- Green Infra-structure Plan
- Sub-area Plans
- Floodplain Management Plan (CRS)
- Hazard Mitigation Plan
- Transportation Plan
- Transit Vision Plan
- Special Area Management Plans
- Housing Plan
- Strategic Plan
- Any plan you can think of

Land Use Plan vs. Zoning



Lots of Colors & Codes !





Zoning – Legal Basis

- Zoning is a mechanism for regulating land use
- Police Power (Provided in the Constitution)
- Stems from the state's authority – enabling legislation
- Limited by “Dillon’s rule” - only permitted to do what state says you can do – can be very specific to each locality in Virginia
- Legal Process
 - Due Process
 - Procedural – process - advertising, hearing, appeals
 - Substantive – must have a legitimate public purpose
 - Equal Protection of the Laws (fairness)



Legal Issues – More than “just” Zoning!

- Vested Rights – legal non-conforming (legacy lots/uses)
- Takings
- Rational Nexus
- Right to Farm Act
- Variances - hardship approaching confiscation
- Case Law vs. Statutory Law
- Public notification – consensus – involvement
- Rules change as new issues come up!

Zoning Parameters

- Uses
 - Permitted by right – administrative review
 - By Special Exception or Conditional Use Permit (PC/BOS review or BZA review)
- Height, Bulk and Area
 - Setbacks, lot coverage, lot size/density
 - Parking, loading, access, and commercial site design
 - Signage
 - Open Space/lot coverage/landscaping
- Conforming vs. Non-conforming

Other Land Use Regulations

- **Subdivision Regulations**
 - Roads (public, private)
 - Lot Size/ Density
 - Open Space
 - Storm water
 - Amenities (sidewalks, street lights, street trees)
- **Overlay Districts**
 - Historic
 - Gateways
 - Architectural Review

Land Use Regulations

- Sanitary
 - Public Water & Sewer
 - Private Well and Septic (Health Department)
- Building Code - Uniform Statewide Building Code
 - ADA – accessibility (commercial vs. private)
- VDOT
 - Subdivision Street Acceptance Requirements (SSAR)
 - Access Management – permits to access state roads

Environmental Regulations

- Chesapeake Bay Preservation Act
 - RPA – set
 - RMA – can be different in different localities
- Clean Water Act – jurisdictional wetlands
- Erosion and Sediment Control (E&S)
- Wetlands Act – piers
- Air Quality Act (burning, conformity analysis)
- Storm water Regulations – changing as we speak!

Thoughts on Regulations/Zoning

- Typically reactive rather than proactive
 - Least common denominator
 - If not expressly permitted than prohibited!
- Consensus Building
 - Committees and Commissions – can create complications
 - Last word becomes law....
 - Squeaky wheel gets the grease
- State and Federal legislation very complicated
 - Really need to know the system to be able to impact it

Laws vs. Regulations

Laws

- Elected Officials
- Lobbyists
- Very public process
- Notifications
- Hearings

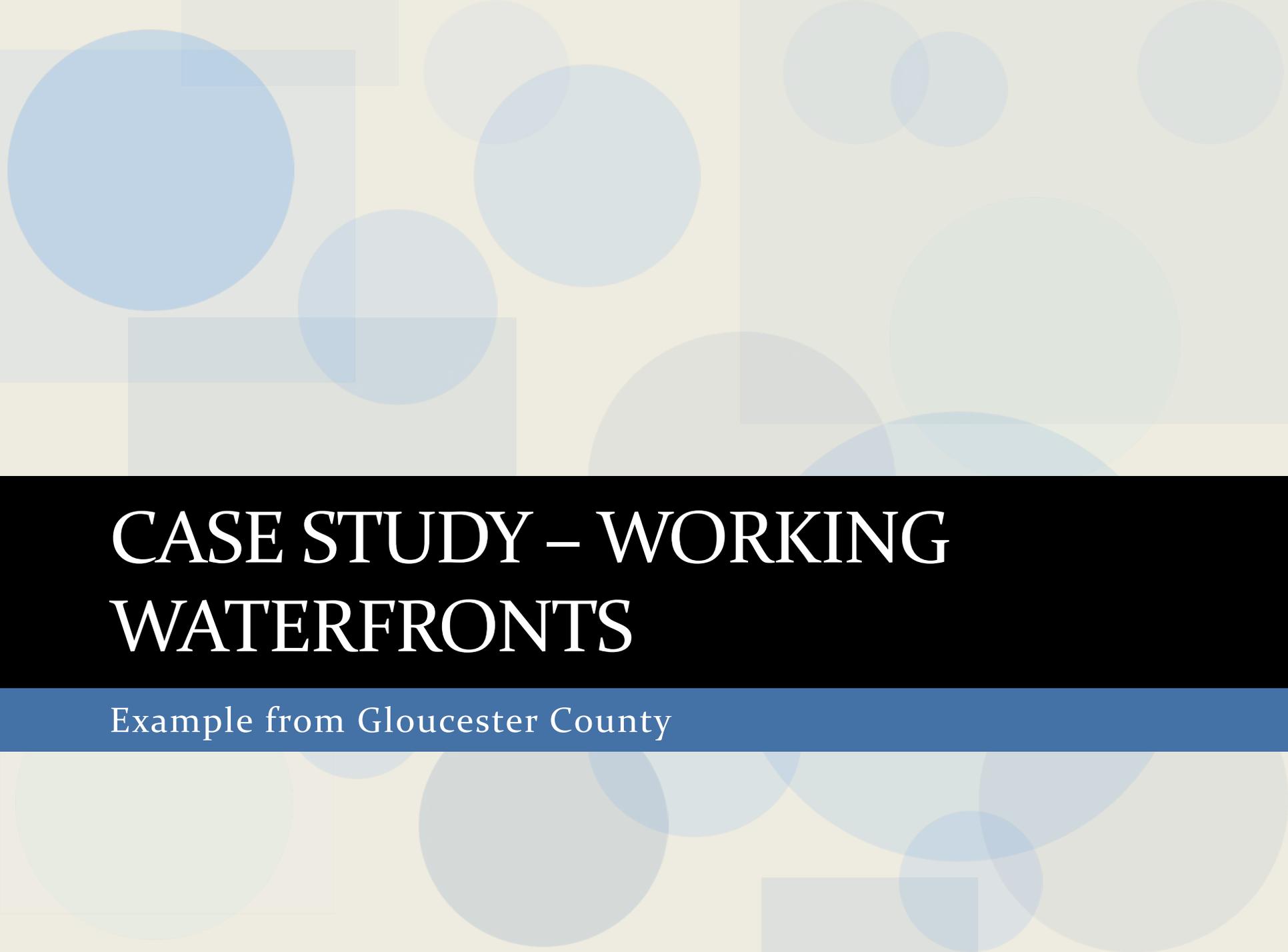
Regulations

- Based on laws
- Staff and committees
- Notifications not very public
- Comment periods
- No real accountability

Examples: Alternative Septic Regulations, Subdivision Street Acceptance Regulations, Access Management Regulations, Chesapeake Bay Preservation Ordinance Compliance, Storm Water Regulations

Policies and Interpretations

- No law or regulation can be written to address every issue – some interpretation is needed
- Based on individual – written policies provide accountability, consistency, and predictability
- Zoning Administrator - written opinions have effect of law – appealable to BZA
- Subdivision Agent – acts on behalf of the Board – appealable to the court
- Most regulations have an appeals process
- Get it in writing (SAGA – Significant Affirmative Government Act – gives a legal standing)



CASE STUDY – WORKING WATERFRONTS

Example from Gloucester County

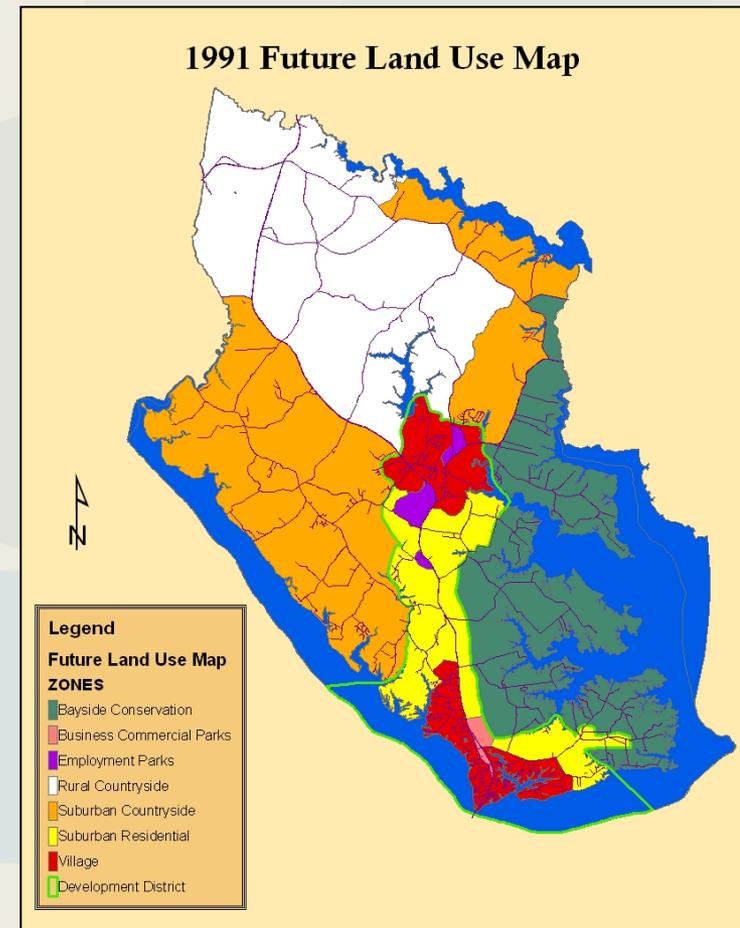
Historical Perspective

- Cultural Heritage –
Natural Resource
Based Economy
 - Farming
 - Forestry
 - Fisheries
- 1950's – Coleman
Bridge
- 1980's – Fastest
Growing locality in VA
- 1984 – Zoning Adopted



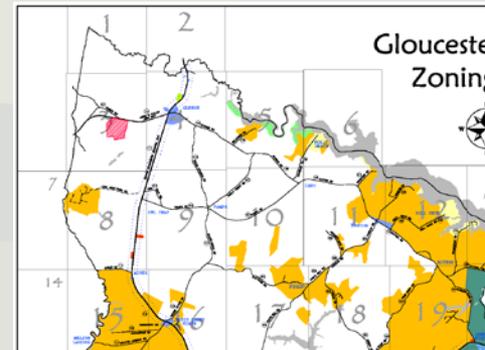
Suburbanization

- 1991 Comprehensive Plan Update
 - Growth Management
 - Cost of Public Services
 - Rural Character (not rural economy)
 - Quality of Development
 - Protection of Natural Resources
 - Separation of Uses



Plan Implementation

- 1998 County-wide Rezoning
 - Based on Build-out Analysis
 - Focus on Development – Commercial & Residential
 - Highway Overlay District
- 2000 Subdivision Ordinance Revision
 - Increased Standards for Development





County's Zoning

- Generally Followed Comp Plan's Recommendations
- More Strip Commercial than Concentrated Village Clusters
- Residential Zoning – densities range from 2 units per acre to 5 acre zoning
- Agricultural Zoning (RC-1 & RC-2)– Limits major development, protects rural character, allows for manufactured homes
- Working Waterfronts included in Residential Districts but restricted by special exception!
 - All non-conforming to the requirements

Current Requirements for Marinas/Boatyards

Zoning District	Lot Requirements		Maximum Height		Yard Setbacks			Accessory Buildings		
	Lot Size	Lot Width	Stories	Feet	Front	Side	Rear	Max. Height	Side Lot Lines	Rear Lot Lines
C-2	5 acres	250 ft.	2.5	35	100 ft.	100 ft.	100 ft.	35 ft.	100 ft.	100 ft.
SC-1	5 acres	250 ft.	2.5	35	100 ft.	100 ft.	100 ft.	35 ft.	100 ft.	100 ft.
RC-2	5 acres	250 ft.	2.5	35	100 ft.	100 ft.	100 ft.	35 ft.	100 ft.	100 ft.

Changing Trends – Increased Conflicts...



Non-conforming Sites



- Legally existing prior to current zoning
- Vested Rights – Protected by State and Local Code “Grandfathered”
- Two Years timeframe
- Expansion –
 - Closer to conformity
 - Meet current requirements

What's at Stake?

“Without economically viable waterfront business, property owners are unable, and lending institutions unwilling, to invest in capital improvements needed to maintain piers, wharves and other waterfront infrastructure”...

“The viability of many businesses on the Gloucester (MA) waterfront has been and remains tied to the health of the commercial fisheries.”



Jack Wiggins - Director for the Urban Harbor Institute, Gloucester, MA – Gloucester, Virginia is very similar!

Time Line- Use Conflict



- MPPDC – Virginia Coastal Zone Management Program 2005
- York River Off Bottom Aquaculture 2006 - use conflict
- MPPDC- Virginia Sea Grant 2006
- MPPDC – Legislative Priority “Water Use Conflict” 2006
- MPPDC-Gloucester BOS-VMRC 2006
- MPPDC- Gloucester BOS 2007-Forms York River Use Conflict Committee
- York River Use Conflict Committee 2007-2008

York River Use Conflict Committee

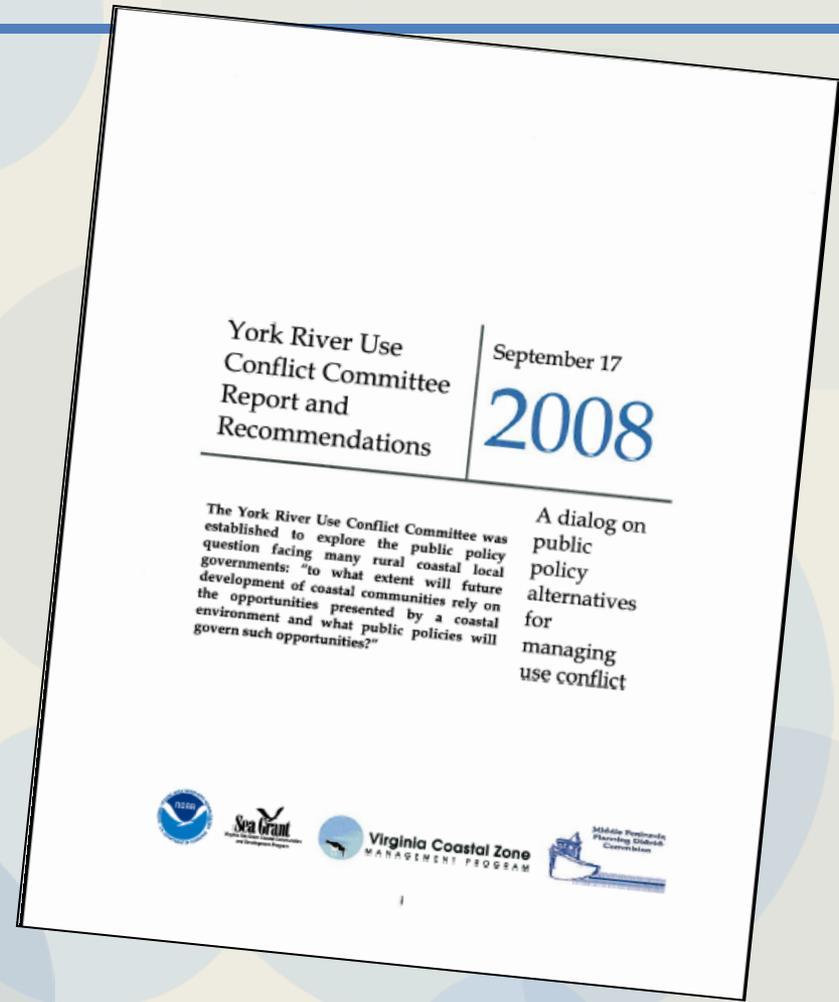
- Determine the features and uses - currently and historically
- Identify conflicts
- Determine causes
- Discuss mitigation or management
- Recommend public policy related to managing conflict

Communication, Education & Consensus!



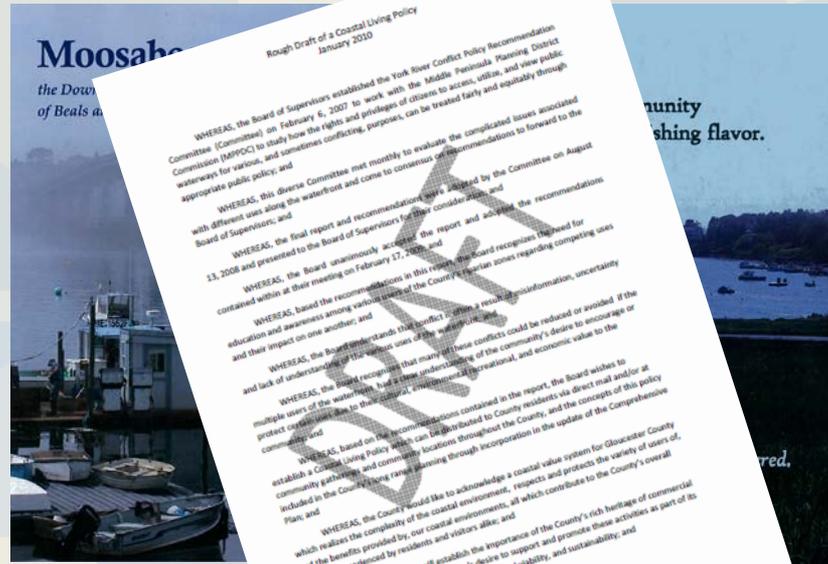
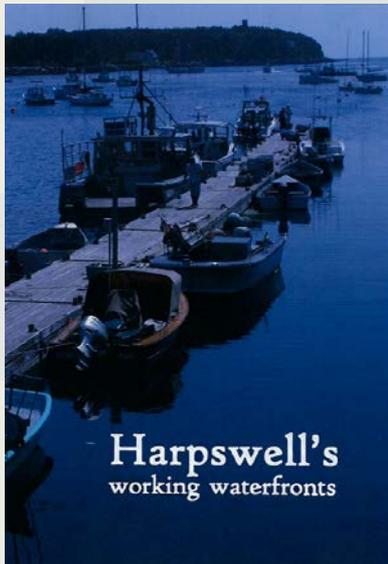
Local Action

- BOS Accepted the plan and adopted the recommendations on February 17th, 2009
- County Administrative staff met to establish a department head work groups to implement the recommendations.



Recommendation 1

- Develop and adopt a Coastal Living Policy to educate and inform County residents (articulate the value system of living in a coastal community)



Rough Draft of a Coastal Living Policy
January 2010

WHEREAS, the board of Supervisors established the York River Conflict Policy Recommendation Committee (Committee) on February 6, 2007 to work with the Middle Peninsula Planning District Commission (MPPDC) to study how the rights and privileges of citizens to access, utilize, and view public waterways for various, and sometimes conflicting, purposes, can be treated fairly and equitably through appropriate public policy; and

WHEREAS, this diverse Committee met monthly to evaluate the complicated issues associated with different uses along the waterfront and come to consensus of recommendations to forward to the Board of Supervisors; and

WHEREAS, the final report and recommendations were prepared by the Committee on August 13, 2008 and presented to the Board of Supervisors for their consideration; and

WHEREAS, the Board unanimously accepted the report and adopted the recommendations contained within at their meeting on February 17, 2009; and

WHEREAS, based on the recommendations in this report, the Board recognizes the need for education and awareness among various users of the waterfront, and the need to encourage or restrict certain uses of the waterfront; and

WHEREAS, the Board understands that the conflict between a variety of uses, uncertainty and lack of understanding of the various uses of the waterfront; and

WHEREAS, the Board recognizes that many of these conflicts could be reduced or avoided if the multiple users of the waterfront were better informed of the County's desire to encourage or restrict certain uses of the waterfront; and

WHEREAS, based on the recommendations contained in the report, the Board wishes to establish a Coastal Living Policy which can be distributed to County residents via direct mail and/or at community gatherings and community locations throughout the County, and the concepts of this policy included in the County Living Plan through incorporation in the update of the Comprehensive Plan; and

WHEREAS, the County would like to acknowledge a coastal value system for Gloucester County which realizes the complexity of the coastal environments, all which contribute to the County's overall charm as experienced by residents and visitors alike; and

WHEREAS, this policy will establish the importance of the County's rich heritage of commercial and recreational fisheries and the County's desire to support and promote these activities as part of its coastal value, tradition, economic and environmental viability, and sustainability; and

Smells
In addition to the salty summer breezes and the aroma of spruce and fir, there are other odors at the more pungent end of the spectrum. While it may irritate your nose, to fishermen the smell of bait is the smell of money. Fish waste, clam shells and salmon pens contribute to the bouquet. And the fumes of diesel exhaust provide a constant reminder that this community is at work getting a product to market and food onto the table.

Touch
At times the night sky is so thick with stars you think you can reach out and touch them. At other times, the air is so thick with fog you can cut it with a knife. This "Downeast air conditioning" arrives pretty regularly in the afternoon or early evening. Sometimes it lasts all day or all week like the typical car commercial, the travel photos are all shot from newly paved roads. After a few wheel alignments, cracked windshields from driving over gravel roads, and ever-higher tax bills to pay for road repairs, you will be well acquainted with the touch decisions of a rural balance sheet: pavement or gravel? full-time or part-time police protection? garbage pickup or pay-as-you-throw?

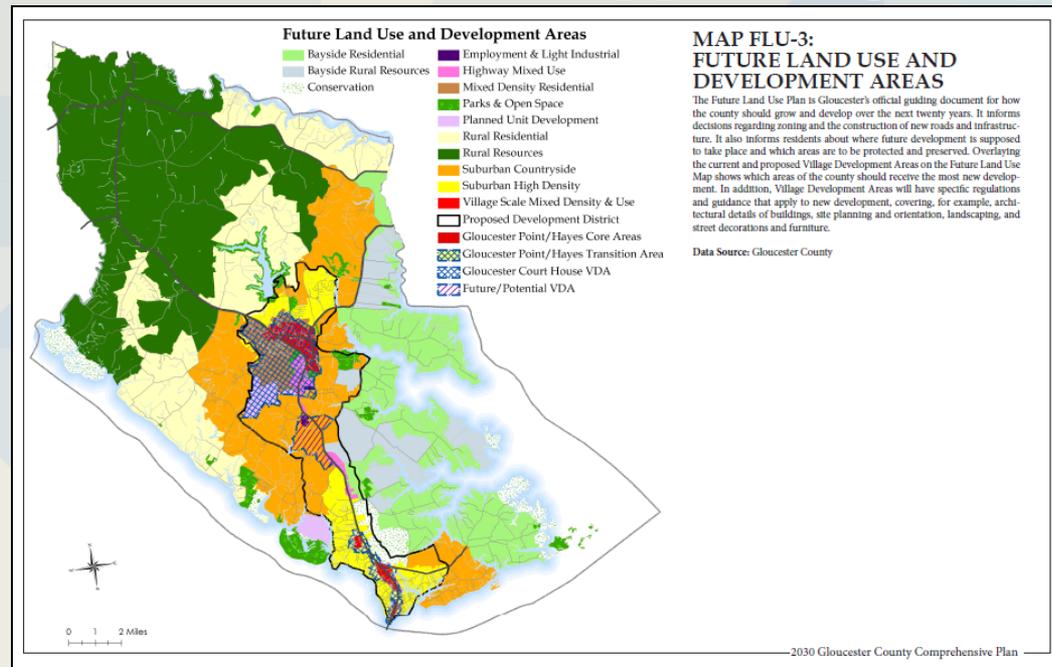
Tastes
The tang of the salt air reaches your lips while you comb the beach for shells, but if you do not conserve fresh water, salt water will be pouring from your tap as well. Boats, especially, but coastal townsport as well, has a very shallow aquifer of freshwater from which we all drink. It will sustain a community's necessities but it will not sustain suburban lawns, daily car washes or other luxury practices. Learn to conserve water (www.waterconserve.info/) and enjoy fresh water into the future.

I like that ... "the economy creeps around fishing."

Recommendation 2

- Denote the County's Land, Air and Water territorial boundaries in the County's Comprehensive Plan and supporting maps

✓ Done





Recommendation 3

Take no action for now regarding aquaculture within the county's jurisdiction. (Give VMRC time to treat the citizens correctly and fairly):

- ✓ *CA-12-01 - Aquaculture facility: Any land, structure, or other appurtenance that is used for aquaculture, including any laboratory, hatchery, pond, raceway, pen, cage, incubator, or other equipment used in aquaculture. **This ordinance shall not apply to aquaculture facilities that are located below mean low water (MLW) and regulated by other agencies or entities.***

Recommendation 4

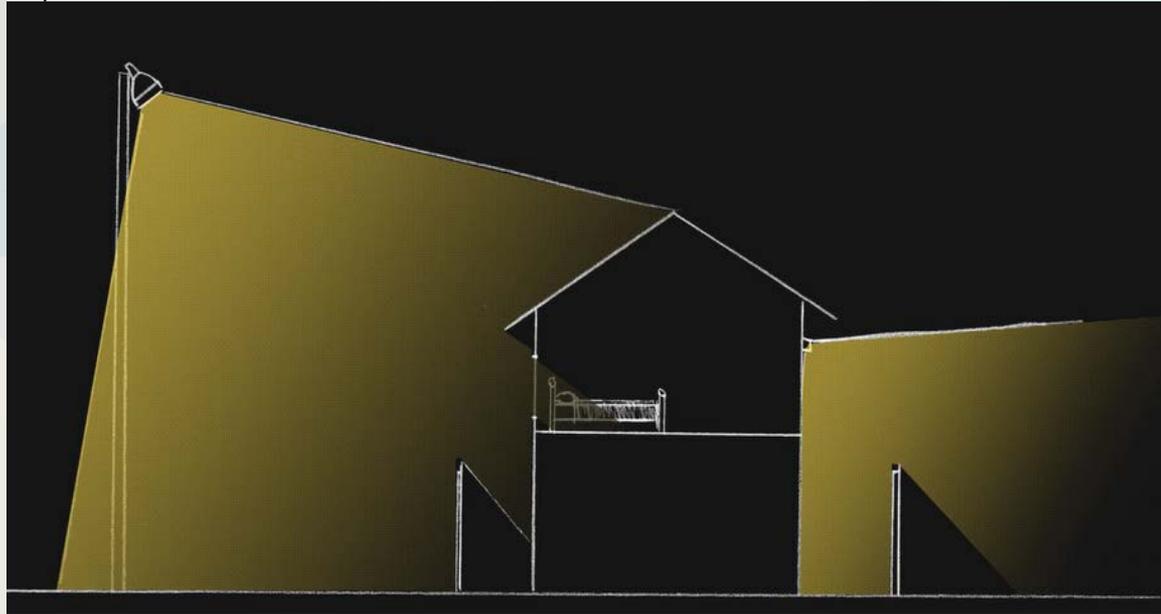
Develop and adopt a policy for the protection of working waterfronts (protect crab, fish and oyster shore side infrastructure)

- ✓ Perrin Plan...
- ✓ Aberdeen Creek?



Recommendation 5

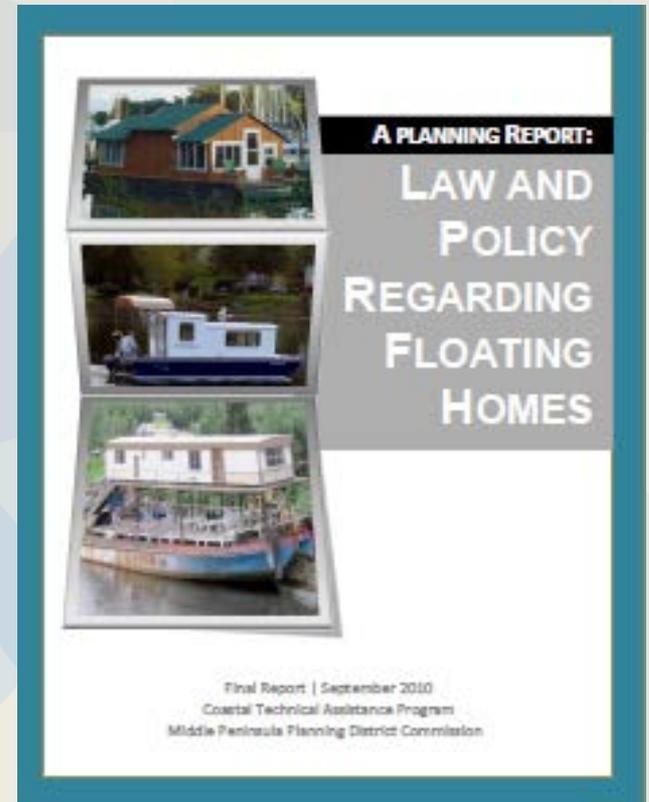
- Develop and adopt a Waterfront Outdoor Lighting Ordinance (keep the neighbors' light out of your bedroom)



Waterfront Light Trespass

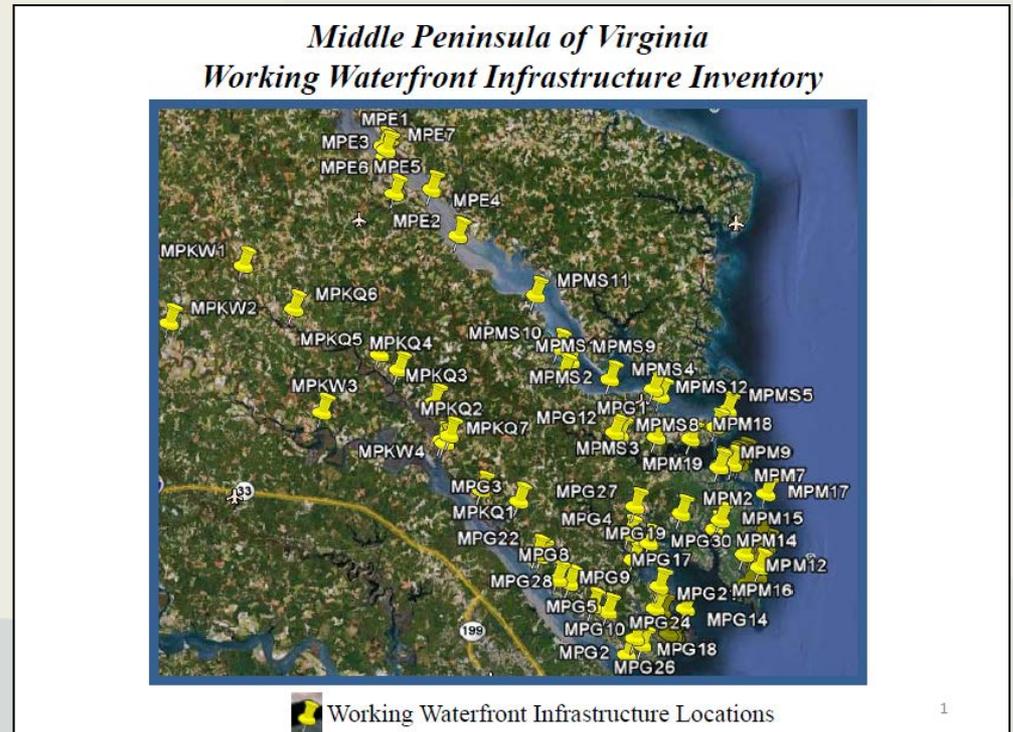
Recommendation 6

- Develop and adopt a policy restricting floating homes within the County.



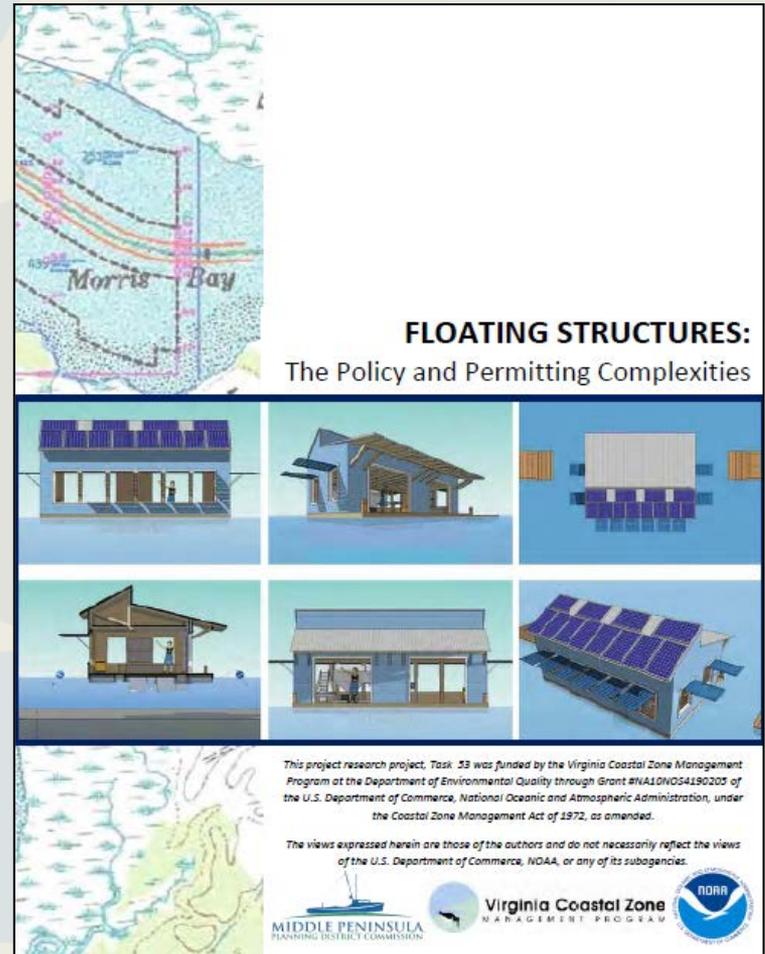
Recommendation 7

- Develop and implement a master plan for public access infrastructure to ensure safe and equal water access for all user groups to the waterways within the County



New Ideas – New “Problems”

- Anderson Neck, LLC
- Oyster Plex
- Many issues!
 - Zoning (in the water!)
 - Floating Workplace
 - Health Department
 - Department of Housing
 - VMRC
- Pulled together to work through





Summary for Gloucester Case Study

Need to plan to preserve and promote working waterfronts

- Land of the Life Worth Living
 - Gloucester's Maritime Heritage
- Opportunities for economic development
 - Fisheries
 - Tourism
 - Recreation
- Ready & Willing Partners
 - VIMS, DEQ, MPPDC, local watermen, local marina owners, county officials & staff, others...

Take Home Message for Working Waterfronts

- Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has.
- Margaret Mead



Discussion and Questions....

